IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11117 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRAKASH BABUBHAI MARATHI (BHAVSAR) - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR VAIBHAV A VYAS for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR LR PUJARI, AGP for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/06/2007

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged his detention order dated 23rd August, 2006 passed by the Police Commissioner,

Ahmedabad City in exercise of power under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (here-in-after referred to as PASA.)

2. The detaining authority was of the opinion that the detention of the petitioner is necessary in order to prevent breach of public order. To come to such a conclusion, the detaining authority relied on the alleged involvement of petitioner in three cases of breach of Bombay Prohibition Act. Detaining Authority also took into account the statements recorded by the investigating agency while inquiring into the said complaints. As per the complaints, the petitioner is alleged to have been found dealing in country liquor of small quantity in three different occasions.

3. It is submitted on behalf of the petitioner that materials before the detaining authority was not sufficient to permit him to form an opinion that the activities of the petitioner are prejudicial to the public order and that to prevent breach thereof it is necessary to place the petitioner under preventive detention.

4. It may be that the petitioner is found to have breached provisions of Bombay Prohibition Act on some occasions and that activities of the petitioner may be a question of law and order, question is whether the activities of the

petitioner can be termed as threat to public order. This question was considered by this Court in Special Civil Application No.5557/2007 dated 26th April, 2007 in which following observations are made :

"5.1. Reliance in this regard was placed on the decision in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors. reported in 2000(1) GLH 393**, wherein the Division Bench placing reliance on an earlier Division Bench decision of this Court in the case of Shamjibhai Manjibhai Patel v. Commissioner of Police, City of Ahmedabad and Anr reported in 1992(2) GLR 1360, observed that cases against the detenu have already been registered and the case would fall under the maintenance of "law and order and not public order". The Division Bench, therefore, opined that the subjective satisfaction arrived at by the detaining authority was illegal since the detention could have been passed by the authority for maintenance of public order. On this basis, the Division Bench was pleased to quash the order of detention.

5.2. Reliance was placed on the decision of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr. reported in AIR 1989 SCC 491,** wherein the Apex Court observed that, may be that the detenu is a bootlegger but only on that count he could not be preventively detained unless his activities affect adversely or is likely to affect adversely the maintenance of public order. In the said case, it was alleged that not only the detenu was a bootlegger, he was indulging in use of force and violence, he was involved in illegal sale of liquor and created an atmosphere of fear and terror by beating innocent citizens. The Apex Court observed that apart from some minor incidents of beating by the detenu the witnesses alleged that the detenu was high handed and fierce by nature.

It was held that the detention order cannot be upheld as this would not be a case of adversely affecting public order.

5.3. Reliance was also placed on the decision of the learned Single Judge of this Court in the case of **Rajubhai Pratapbhai Panpatil vs. Commissioner of Police, Surat City and Ors. reported in 2006(1) G.L.H. 382**, wherein the learned Judge found that mere registration of prohibition offence is not enough to arrive at the subjective satisfaction that the activities of the detenu are prejudicial to maintenance of public order.

5.4. Reliance was placed on the decision of the Apex Court in the case of **District Collector, Ananthapur and Anr. v. V.Laxmanna reported in (2005) 3 SCCC 663**, wherein the Apex Court observed that mere dealing with arrack or transport or sale thereof by itself would not become an activity prejudicial to the maintenance of pubic order and before ordering detention the authority must be satisfied on material available to it that the arrack dealt with by the detenu is dangerous to public health.

7. Having heard learned advocates for the parties, I find that the contention raised by the learned advocate for the petitioner is required to be upheld. In the present case except for six cases of bootlegging filed against the petitioner there is no further material permitting the detaining authority to come to the conclusion that her activities were prejudicial to the interest of public order. As noted earlier three out of these six cases were filed in the year 2005, whereas the order of detention was passed in the December, 2006. Quite apart from the time gap in taking into consideration the stale cases, I find that as observed by the Division Bench of this Court in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors (supra)** mere involvement of a detenu in activities of

bootlegging *per se* would not permit the authority to come to a conclusion that her activities were prejudicial to the public order. This view has also been followed subsequently and is also supported by the decision of the Apex Court in the case of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr.(supra)**.

5. In view of the above legal position, the opinion formed by the detaining authority cannot be sustained. Since the grounds for passing the detention order is found legally unsustainable, the detention order dated 23rd August, 2006 is quashed. Since the order of detention is quashed, petitioner shall be released forthwith unless involved in any other criminal cases or detention.

6. With these directions, the petition is disposed of. Rule is made absolute.

Direct Service is permitted.

(Akil Kureshi,J.)

(raghu)